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Remarks

This response is being submitted in response to the Examiner's communication mailed August 11, 2003. The Examiner's communication indicates that the Amendment filed April 30, 2003 was non-compliant for failing to provide a complete listing of all of the claims (i.e., previously cancelled claims 1-35). A response to the Examiner's communication is due September 11, 2003. Accordingly, this response is being timely filed.

This Amendment is substantially identical to the amendment filed April 30, 2003, except that a complete listing of all of the claims has been provided, including claims 1-35. In addition, as discussed herein, since the original signed Declaration and Terminal Disclaimer were submitted with the response filed April 30, 2003, applicant has not resubmitted them with this response.

As indicated in the response filed April 30, 2003, claims 36-41 and 43-69 were pending. By way of that response and this response, claims 36, 40, 41, 43-46, 60, 63, and 64 have been amended, claims 51, 52, 67, and 69 have been cancelled, and claims 70-77 have been added. Claim 42 was previously cancelled. The changes to the claims presented herein are identical to the changes made in the April 30, 2003 amendment. Support for the amendments to the specification and the claims can be found in the application as originally filed, and no new matter has been added. Accordingly, claims 36-41, 43-50, 53-66, 68, and 70-77 are currently pending.

As a preliminary matter, applicant acknowledges that claims 51, 52, 56, 59, and 67 are free from the prior art. These claims have only been provisionally rejected under the judicially created doctrine of obviousness-type double patenting. As discussed herein, the subject matter of claims 51, 52, and 67 have been incorporated into claims 36, 74, and 60, respectively. In addition, applicant enclosed with the response filed April 30, 2003 an executed Terminal Disclaimer, and required fee, to overcome the provisional double-patenting rejections. Accordingly, applicant submits that all of the pending claims are in condition for allowance, as discussed herein.

Item 3 of the Office Action-Oath/Declaration

The Declaration has been objected to because alterations to the residence address for inventor Woodward were neither dated nor initialed.

Pursuant to 37 C.F.R. § 1.67(a)(2), applicant enclosed with the response filed April 30, 2003, a Supplemental Declaration executed by inventor Woodward to whom the deficiency relates. Applicant submits that the filing of the enclosed Supplemental Declaration is sufficient to overcome the objection.

Rejections under 35 U.S.C. § 112, first paragraph

Claims 40 and 63 have been rejected under 35 U.S.C. § 112, first paragraph, as allegedly not enabling all quinoxaline derivatives.

Although applicant does not concede to the remarks made in the Office Action, to advance the prosecution of the subject application, applicant has amended claims 40 and 63, as set forth above. Claims 40 and 63 no longer recite quinoxaline derivatives. Accordingly, applicant submits that the rejection has been overcome.

In view of the above, applicant submits that claims 40 and 63 are enabled under 35 U.S.C. § 112, first paragraph.

Rejections Under 35 U.S.C. § 112, Second Paragraph

Claims 40, 41, 63 and 64 have been rejected under 35 U.S.C. § 112, second paragraph as allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Office Action states that claims 40 and 63 are indefinite because it is allegedly not clear which of the quinoxaline derivatives are workable in the invention. In addition, the Office Action states that claims 41 and 64 are indefinite due to the recitation of the term "NMDA".

Applicant does not concede to the remarks stated in the Office Action, but to advance the prosecution of the subject application, applicant has amended claims 40 and 63 by removing the term derivatives, and has amended claims 41 and 64 to define "NMDA", as well understood by persons of ordinary skill in the art.

In view of the above, applicant submits that claims 40, 41, 63, and 64 are definite under 35 U.S.C. § 112, second paragraph.

Rejection Under 35 U.S.C. § 102

Claims 36-41, 43, 44, 47-50, 53, 54, 57, and 69 have been rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Hanssler et al. (DE 3309765). Claims 36, 37, 41, 43, 44, 46-50, 53, 54, 57, and 69 have been rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by FR 2272684. Claims 36, 37, 43-45, 47-50, 53, 54, and 69 have been rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Kelley et al. (U.S. Patent No. 5,118,493). Claims 36-41, 47-50, 53-55, 57, 58, 60-66, 68, and 69 have been rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Dean et al. (U.S. Patent No. 6,242,442).

As indicated hereinabove, claims 51, 52, 56, 59, and 67 are free from the prior art.

Applicant does not concede to the remarks of the Office Action regarding the rejections of the claims over the prior art. However, to advance the prosecution of the subject application, applicant has amended the claims, as set forth above. In particular, claim 36 has been amended to include the limitation of claim 51, claim 52 has been rewritten as independent claim 74, and claim 60 has been amended to include the limitation of claim 67. The amendments to independent claims 36, 60, and 74 similarly apply to the claims dependent therefrom. Claim 59 has not been amended, but is free from the prior art.

Accordingly, because claims 36, 60, and 74 include the limitations of claims that were indicated to be free from the prior art, applicant submits that claims 36, 60, and 74, and the claims dependent therefrom, are similarly free from the prior art. In addition, claim 59 is free from the prior art.

In view of the above, applicant submits that the present claims, that is claims 36-41, 43-50, 53-66, 68, and 70-77, are not anticipated by Hanssler et al., FR 2272684, Kelley et al., and/or Dean et al. under 35 U.S.C. § 102. In addition, applicant submits that the present claims are not suggested by, and are unobvious from and patentable over any and all of the prior art, taken singly or in any combination, under 35 U.S.C. § 103.

Double Patenting

Claims 36-41 and 43-69 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1-23 of U.S. Application No. 09/848,249.

Applicant enclosed with the response filed April 30, 2003, a signed Terminal Disclaimer, and required fee. Accordingly, applicant respectfully requests the provisional rejection be withdrawn.

Each of the present dependent claims is separately patentable over the prior art. For example, none of the prior art disclose, teach, or even suggest the present compositions including the additional feature or features recited in any of

the present dependent claims. Therefore, applicant submits that each of the present claims is separately patentable over the prior art.

In conclusion, applicant has shown that the present claims satisfy the requirements of 35 U.S.C. § 112, and are not anticipated by and are unobvious from and patentable over the prior art under 35 U.S.C. §§ 102 and 103. Therefore, applicant submits that the present claims, that is claims 36-41, 43-50, 53-66, 68, and 70-77 are allowable, and respectfully requests the Examiner to pass the above-identified application to issuance at an early date. Should any matters remain unresolved, the Examiner is requested to call (collect) applicant's attorney at the telephone number given below.

Date: August 23, 2003

Respectfully submitted,

Frank J. Uxa
Attorney for Applicant
Registration No. 25,612
4 Venture, Suite 300
Irvine, California 92618
(949) 450-1750
(949) 450-1764 Facsimile